

**R.D. # 0020-02
Pomona, NJ**

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

ACADEMY EXPRESS, LLC¹
Employer,

and

CASE 22-RC-12287

**LOCAL 108 RETAIL WHOLESALE AND
DEPARTMENT STORE UNION,
UFCW, AFL-CIO/CLC**
Petitioner.

DECISION AND DIRECTION OF ELECTION

1. Introduction

The Petitioner filed a petition, amended at the hearing, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all full-time and regular part-time shuttle and charter bus drivers employed by the Employer at its Pomona, New Jersey facility. The Employer argues that the petitioned-for unit is inappropriate, and that the only appropriate unit would include all such employees of the Employer at its multiple sites.

For the reasons set forth below, I find that the Employer has not overcome the single-location presumption and that an election should be conducted for the petitioned-

¹ The Employer's name appears as amended at the Hearing.

for single-location unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Upon the entire record in this proceeding,² I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act; and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization involved claims to represent certain employees of the Employer.⁴
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time Shuttle and Charter Bus Drivers employed by the Employer at its Pomona, New Jersey facility, excluding all office clerical employees, professional employees, dispatchers, guards and supervisors as defined by the Act.

² Briefs filed by the parties have been fully considered.

³ The Employer provides interstate and intrastate charter line and bus services from various facilities in New York and New Jersey, including a facility in Pomona, New Jersey, the petitioned-for facility.

⁴ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

2. Facts

The Employer is a New Jersey limited liability corporation, a holding company, which owns and operates three bus companies: Academy Lines, LLC; Academy Express; and Number 22 Hillside. The Employer's administrative offices are at its terminal in Hoboken, New Jersey. The Employer has four additional terminals located in Pomona, Secaucus⁵ and Perth Amboy, New Jersey and the Bronx, New York.

The parties essentially agree as to the classifications to be included in an appropriate unit: all full-time and regular part-time drivers employed by the Employer, excluding all office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act.⁶ The Petitioner seeks to represent the above-listed job classifications at the Employer's Pomona, New Jersey facility only. The Employer asserts that the only appropriate unit is one encompassing employees at all four of its facilities that employ drivers. Thus, the issue in this case is whether a unit consisting only of employees in the Pomona, New Jersey facility is appropriate for collective bargaining or whether only the multi-facility unit asserted by the Employer is appropriate.

There are approximately 45 employees in the petitioned-for classifications at the Pomona terminal, 20 in Hoboken, 90 in Perth Amboy and 30 in the Bronx. In addition, the Employer's administrative offices are located at the Hoboken facility. Among the centralized functions occurring at the Hoboken offices are the Employer's operations management, human resources and sales departments. The Employer's witness, Thomas

⁵ There are no drivers employed at the Secaucus facility, which functions solely as a maintenance terminal.

⁶ The Employer's additional proposed exclusions (salespersons and employees of the Perth Amboy Terminal employed in the Rutgers and Middlesex service) would not apply to the single-location unit found appropriate here.

Scullin, Vice President and Chief Operating Officer, works in Hoboken. Scullin testified that he visits the other terminals only weekly or every other week.

Each terminal has a Terminal Manager who reports to Scullin. Each Terminal Manager oversees the dispatchers and drivers who work at that terminal. Terminal Managers have the authority to hire employees and in fact conduct the interviews of applicants for employment at the local terminals. Terminal Managers also have the authority to discipline employees. That authority includes the ability to impose suspensions, any type of warnings and even discharge in extreme cases, although major suspensions and terminations are presented to Hoboken management before being put into effect. Each Terminal Manager decides whether to grant time off to that terminal's employees.

In addition to the Terminal Manager, each terminal has a Maintenance Manager, who also reports to Scullin. The Maintenance Manager at each facility oversees all of the maintenance aspects of the buses at that facility. In addition to a central record of maintenance on all the Employer's buses, local maintenance records are maintained at each terminal for that terminal's buses.

Advertising, procurement and sales are conducted from the Hoboken offices on behalf of all the Employer's terminals. However, each terminal has an individual budget, which each terminal prepares based on its separate expenses and submits for review and approval from management in Hoboken.

The Employer's personnel policies are uniformly applicable to its employees, other than policies affected by State law. Pay and benefits are uniform throughout the facilities. Though coordinated through the Human Resources office in Hoboken,

interviewing and hiring is done locally at each terminal. While most personnel records are maintained both in Hoboken and at each terminal, certain unspecified personnel records are kept solely at the local terminals.

At the Pomona terminal in the last 12 months, there have been as many as 12 temporary transfers involving between 4 and 10 Pomona employees who worked at other terminals for between 4 and 7 days. Also in the last 12 months, there have been about 6 such temporary transfers involving between 4 and 10 employees from other than the Pomona terminal who worked at Pomona for between 4 and 7 days. All these temporary transfers are done on a voluntary basis. There is no significant transfer of employees on a permanent or long-term basis.

2. Analysis

Section 9(b) of the Act states that the “Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, or subdivision thereof.”

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be appropriate. The Board has held that in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

Here, the Petitioner has requested a less than system-wide unit composed only of the employees at the Pomona terminal. The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993);

Bowie Hall Trucking, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome “by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit.” *Id.* The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; work contacts existing among the several groups of employees; extent of functional integration of operations; degree of centralized versus local control over daily operations and labor relations; and the differences, if any, in the skills and functions of employees. *Id.* at 42, citing *Sol’s*, 272 NLRB 621 (1984). These factors must be weighed in resolving the unit contentions of the parties. The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, above at 429.

Based upon a review of the record, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit. In this regard, the lack of a direct bargaining history for this unit and the fact that no other labor organization seeks to represent the employees on a broader basis are factors that support the requested unit. *New Britain Transportation*, 330 NLRB 397, 398 (1999).

As to geography, the Pomona terminal is geographically very far removed from all the Employer’s other terminals, one of which, the Bronx facility, is also in another state, a factor which has an effect on a number of labor policies. Even the facility closest to Pomona, the Perth Amboy facility, is at least 75 miles and an hour and a half drive away. While geographical separation is not necessarily conclusive, it is a strong indicator that a single-location unit is appropriate. *Dixie Belle Mills*, 139 NLRB 629 (1962); *Van Lear*

Equipment, Inc., 336 NLRB No. 114 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single bus terminal location to be appropriate where, *inter alia*, the other terminals were between 3 and 21 miles apart. See also *New Britain Transportation*, above (separation of six and 12 miles).

Clearly, there is significant evidence of centralized control of certain labor policies: the Hoboken office dictates common policies regarding uniforms, bereavement, 401k plan, vacation and medical benefits and an Employer handbook for all employees at its terminals. All advertising, procurement and sales originate in the Hoboken office. However, each terminal has a terminal manager and a maintenance manager who oversee the dispatchers, drivers and maintenance aspects of the buses at their facility. Local management also has authority to hire and discipline employees and to schedule and approve leave.

While these facts describe a highly centralized operation, a unit less than employer-wide can be appropriate, notwithstanding a high degree of centralized administration. *L'EGGS Products Inc.*, 236 NLRB 354 (1978). Indeed, centralized administration and control of some labor relations policies and procedures is consistent with a finding that there exists sufficient local autonomy to support the single-location presumption. The Employer's reliance on *R&D Trucking*, 327 NLRB 531 (1999) to suggest otherwise is misplaced, as that factually dissimilar case involved a small number of employees (10), no local autonomy and just two facilities located five miles apart. Here, the presence of the Terminal Manager and Maintenance Manager with their substantial authority is evidence that individuals at Pomona are vested with significant autonomy over local terms and conditions of employment.

Moreover, despite the centralization, the Employer's various terminals are not so substantially interdependent or functionally integrated that a system-wide unit is required. *Southern California Water Company*, 228 NLRB 1296, 1297 (1977) (“[O]perations are not so functionally integrated that a cessation of work in one [division] would cause a system wide shutdown of operations”). Here, the evidence does not suggest that the Employer's operations at its other terminals are reliant on a day-to-day basis upon the Pomona operations or vice versa.

I also do not find that the record supports a finding that there has been any substantial or significant employee interchange. The mere fact that some line drivers from other facilities lay over in Pomona after dropping off passengers in nearby Atlantic City is not indicative of interchange, but rather, would at best lead to incidental contact. *D&L Transportation*, above. Likewise, the fact that Pomona drivers occasionally volunteer for assignments originating in another terminals for which drivers from other facilities also volunteer does not support a finding of interchange.

While the Employer points to instances of temporary transfers for special assignments that happen once or twice a year, such as the U.S. Open Tennis Tournament or other large charter jobs that occur about once a month, employees do not regularly work from other than their assigned facility. Moreover, all transfers - both short-term and long-term - are always voluntary. The Board gives less weight to voluntary interchange in determining whether employees from different locations share a common identity. *D&L Transportation*, above at 162, fn. 7, citing *Dayton-Hudson Corp.*, 227 NLRB 1436, 1438 (1977).

In sum, I find that the significant autonomy vested in local management, the considerable geographical separation of the Pomona facility from the Employer's other facilities, the lack of substantial employee interchange and the lack of contrary bargaining history outweigh the otherwise centralized control of the Employer's labor policies. Therefore, I find that the single-location presumption has not been rebutted and that the requested unit is appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that

began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 108, Retail Wholesale and Department Store Union, UFCW, AFL-CIO/CLC**.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **December 26, 2002**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. The Board in Washington must receive this request by January 2, 2003.

Signed at Newark, New Jersey this 18th day of December 2002.

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